

**Submission by Legal Aid Western Australia  
To the Community Development and Justice Standing Committee  
Inquiry into Custodial Arrangements in Police Lockups**

**Introduction**

Legal Aid Western Australia provides criminal law services throughout Western Australia. The head office is in Perth. There are two suburban offices of Legal Aid, one at Midland and one at Fremantle. There are seven regional offices - Albany, Broome, Bunbury, Geraldton, Kalgoorlie, Kununurra, and South Hedland. Legal Aid also provides legal services to the Christmas and Cocos Islands. The regional offices provide circuit duty lawyer services to regional Magistrates and Children's Court sittings. In preparation of this submission, feedback was sought from metropolitan and regional lawyers providing duty lawyer services.

**2. Access by detainees to medical and legal services and other third parties**

*Criminal Investigation Act 2006*

Under s137 of the above Act an arrested person is entitled to any necessary medical treatment, a reasonable degree of privacy from the mass media, a reasonable opportunity to communicate or attempt to communicate with a relative or friend to inform that person of their whereabouts, to an interpreter.

Access to legal services

Legal Aid duty lawyers are provided throughout the State to assist accused with advice and representation. A duty lawyer would generally speak to an arrested accused just prior to their appearance in court. In the metropolitan area and larger regional centres, arrested accused are seen by the duty lawyer in the detention area of the court. Otherwise accused are seen within the lockup.

Under s 5 of the *Bail Act 1982* an accused who is in custody awaiting his initial appearance in court is entitled to have his or her case for bail considered as soon as practicable.

Legal Aid is aware of a proposal to video link accused in regional lockups with a Magistrate and considers that this would be a very useful way of ensuring that people in regional lockups appear in a timely manner before a Magistrate to have bail considered without the need for the transportation of an accused over a long distance. Instructions and advice would be provided by a confidential telephone link with a duty lawyer prior to representation by the duty lawyer before a Magistrate.

In the Perth metropolitan area, if a person is arrested on a Friday night then they appear at the Northbridge Magistrates Court which is part of the Northbridge Police Station. A duty lawyer is provided to provide legal services to accused appearing in court on Saturday morning. Prior to the opening of the Northbridge lockup, people who had been

arrested were seen at the East Perth lockup. A Saturday morning court operates also from the Perth Children's Court by video link to the Banksia Hill Detention Centre. Legal Aid provides a duty lawyer at Banksia Hill on Saturdays.

Apart from providing advice to people in custody prior to their bail application, Legal Aid also receives inquiries by telephone by people after their arrest and provides advice by telephone during office hours as there is no after hours service.

Accused occasionally indicate that they have not had the opportunity of contacting a family member or friend to advise of their whereabouts or to contact a lawyer after arrest.

#### Access to medical services

Accused who have psychiatric illness have indicated that they have not been permitted to collect medication or a prescription at the time of arrest. It has also been indicated by some accused that they have not been allowed to take medication while in the lockup.

In relation to this it would be useful if all lockups had access to a medical service (including by telephone) that could confirm the prescription of a person arrested and confirm the appropriateness of the provision of medication to the person in custody.

Accused have occasionally indicated that they have a medical issue that requires attention that has not been attended to including in circumstances where they have not raised that they need medical attention. In these circumstances they would be assisted by the duty lawyer in raising this matter with the relevant custodial officer.

### **3. Lock up design, staffing and administration**

#### Lock up design

In some regional police stations, clients are not given access to speak confidentially with a lawyer. The police remain in the room with the accused person. This occurs with people who are receiving pre-interview advice, and also with those charged and then receiving advice in relation to court proceedings. This makes it difficult to take any instructions. This is the practice in some stations including Halls Creek, Warmun and Wyndham. The option of confidential telephone interviews has not been available.

Having secure non contact interview rooms and confidential telephone interview areas for people in custody would provide for confidentiality and avoid the need for a police officer to be present to provide security during interview situations.

#### Training of custodial staff

Another matter raised is that it would be helpful if all staff undertaking responsibility for the custody of people have specific training in communication strategies for dealing with detainees who are stressed and particularly detainees who are under the influence of drugs or alcohol or who have a psychiatric illness.

#### **4. Training of custodial officers on cultural issues**

##### Training on cultural issues

It would be useful if custodial officers had training on cultural issues particularly relating to Aboriginal culture. For example, there are many family relationships that define the closeness allowed between two people in Aboriginal culture. Depending on the relationship, sometimes people should not be sitting next to each other, or sometimes even in the same room, or in the same general vicinity. Insisting people sit in the same courtroom or the waiting room can be disrespectful.

##### Staffing diversity

Another observation made is that there are reasonable numbers of Aboriginal police officers and liaison officers but Serco does not appear to have many Aboriginal staff members.

It would be beneficial to have more Aboriginal Serco officers which would be of assistance to Aboriginal people who are feeling distressed at the time that they are in custody. It may be that an Aboriginal person in custody would feel more comfortable about raising health or other issues with an Aboriginal staff member.

#### **5. Whether oversight mechanisms, procedures and disciplinary measures for personnel involved in custodial processes are adequate**

Legal Aid is aware of the proposal that the Inspector of Custodial Services have oversight of custodial arrangements in police lockups and supports this proposal as an effective oversight mechanism to consider any systemic issues relating to the detention of people after arrest.